

SLR:LDM:CSK
F.#200800780

ORIGINAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

STIPULATION AND ORDER

- against -

CR 09-360

KONTOGIANNIS, et. al.

(Matsumoto, J.)

Defendants.

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IN RE: THIRD-PARTY PETITION BY
MARATHON NATIONAL BANK OF NEW YORK
REGARDING THE REAL PROPERTY AND
PREMISES KNOWN AS ONE PLAZA ROAD,
GREENVALE, NEW YORK 11548

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WHEREAS, on or about June 3, 2011, et. seq.,

Preliminary Orders of Forfeiture were entered against the defendants and made a part of their respective Judgments and Convictions at the time of sentencing by this Court, pursuant to Fed. R. Crim. P. 32.2, 18 U.S.C. § 982 and 21 U.S.C. § 853(p) (See Dkt ## 170, 181-186, 217, 222, 257, 260); and

WHEREAS, included in the Preliminary Orders of Forfeiture was, inter alia, the commercial, income producing real property and premises known as One Plaza Road, Greenvale, New York 11548 (the "One Plaza Road Property") (see Id.); and

WHEREAS, reasonable notice of the Preliminary Orders of Forfeiture have been made on any and all potential third parties, including, but not limited to, Third-Party Petitioner Marathon

National Bank of New York; Greenvale Financial Center, Inc. (title owner of the One Plaza Road Property and its principal Annette Kontogiannis Apergis); and publication of the Preliminary Orders of Forfeiture has been completed (See Dkt. # 264 at Exhibits 1-3; Dkt. ## 224-231); and

WHEREAS, on or about November 28, 2011, Third-Party Petitioner Marathon National Bank of New York, filed with this Court a Petition claiming an interest in the One Plaza Road Property (See Dkt. # 246); and

WHEREAS, based on filings submitted in connection with Marathon National Bank of New York v. Greenvale Financial Center, Inc., et. al., Index No. 09-021794 (N.Y. Supreme Court, Nassau County) (hereinafter "the State Foreclosure Action"): the Judgment of Foreclosure is in the amount of \$6,510,505.05; the Nassau County Department of Assessment value of the One Plaza Road Property is \$3,493,000.00 as of January 3, 2012; the foreclosure sale is currently scheduled to be held on Tuesday, March 13, 2012 at 11:30 a.m.; the rents collected by the State-court appointed Receiver from September 1, 2011 through December 31, 2011 is in the amount of \$198,636.73; the State-court appointed Receiver maintains \$682,006.90 in a checking account in connection with the foreclosure proceeding, as of January 3, 2012; and the State court has authorized commissions and reimbursement of expenses of the Receiver in the total amount of

\$79,463.19 and \$1,154.57, respectively for the time period of December 14, 2009 through December 31, 2011; and

WHEREAS, based on representations made by Marathon National Bank of New York the minimum bid at such foreclosure sale on the One Plaza Road Property is expected to be no less than \$3,420,000.00; and

WHEREAS, apart from Marathon National Bank of New York, no other person or entity has filed with this Court any third-party claim or interest in the One Plaza Road Property and the time to do so has expired under Fed. R. Crim. P. 32.2 (b) (6) and 21 U.S.C. § 853(n).

NOW THEREFORE, IT IS HEREBY STIPULATED, ORDERED, ADJUDGED AND DECREED, based on all the proceedings that have occurred and on consent, by and between the United States, and Third-Party Petitioner, Marathon National Bank of New York, as follows:

1. Marathon National Bank of New York shall proceed to execute and hold a sale on its judgment of foreclosure and sale, entered by the Nassau County Supreme Court on January 6, 2012 against the One Plaza Road Property in the State Foreclosure Action.

2. Marathon National Bank of New York shall serve notice of its motion for a Confirmation of the State-court appointed Referee's Report of Sale in the State Foreclosure

Action on the victim financial institutions in this federal criminal action, DLJ Mortgage Capital, Inc. ("DLJ"), by and through their counsel, John P. Amato, Robert J. Malatak, and Annie Power, Esqs., Hahn & Henssen, LLP, 488 Madison Avenue, New York, New York 10022; and the Federal Deposit Insurance Corporation ("FDIC"), by and through their counsel, Alan T. Gallanty, Esq., Kantor, Davidoff Wolfe, Madelker Twomey & Gallanty, P.C., 51 East 42nd Street, 17th Floor, New York, New York 10017-5404; as well as on the United States, by and through its counsel.

3. Marathon National Bank of New York shall further serve the victim financial institutions in this federal criminal action, DLJ, FDIC, and the United States, by and through their respective counsel, with notice of any and all subsequent motions and/or applications Marathon National Bank of New York may make to the State-court appointed Receiver, State-court appointed Referee, and/or the State court in the State Foreclosure Action, including but not limited to, any and all motions and/or applications regarding any and all surplus monies, including but is not limited to, any and all monies that have been collected and held by the Receiver from the One Plaza Road Property.

4. Nothing in this Stipulation and Order shall be deemed to preclude or waive any and all rights and/or claims of the victim financial institutions in this federal criminal

action, DLJ and FDIC, the United States, or Marathon National Bank of New York, may have to proceed against any and all surplus monies, including but not limited to, any and all monies that have been collected and held by the Receiver from the One Plaza Road Property.

5. The United States shall provide Marathon National Bank of New York with a release of its Notice of Pendency filed against the One Plaza Road Property (the "Release"). The Release shall be given to the Attorneys for Marathon National Bank of New York and held in escrow until the conclusion of the sale in the State Foreclosure Action. The Attorneys for Marathon National Bank of New York are hereby authorized to release and deliver the Release to any title company insuring title for a grantee of the Referee's Deed issued in the State Foreclosure Action, which shall be recorded by the title company and with all appropriate authorities. In the event that the State Foreclosure Action is dismissed or terminated without the One Plaza Road Property being sold, the Attorneys for Marathon National Bank shall return the release to the undersigned counsel for the United States and shall destroy any copies.

6. Marathon National Bank of New York hereby agrees to voluntarily withdraw and dismiss its Third-Party Motion/Petition to Set Aside Forfeiture filed with this Court, with prejudice and without costs or fees.

7. In further consideration of the above, Marathon National Bank of New York agrees to release, remise, and forever discharge the United States and its agencies, agents, officers, and employees, past and present, from all claims or causes of action which Marathon National Bank of New York ever had, now has, or hereafter may have against the United States, its agencies, agents, officers, and employees, past and present, with respect to the terms and conditions of this Stipulation and Order.

8. In further consideration of the above, Marathon National Bank of New York agrees that they shall hold the United States and its agencies, agents, officers, and employees, past and present, harmless from any claims or suits brought by any persons or entities concerning, referring or relating to the terms and conditions of this Stipulation and Order.

9. Marathon National Bank of New York represents that they are fully authorized to execute this Stipulation and Order and all other documents necessary to effectuate this Stipulation.

10. The Court shall retain jurisdiction over this action to effectuate the terms of this Stipulation and Order.

11. This Stipulation and Order constitutes the entire agreement between the parties with respect to the One Plaza Road Property and may not be modified or amended except by written agreement executed by each of them.

12. The Clerk of Court shall docket, file and forward three (3) certified copies of this Stipulation and Order to the United States Attorney's Office, 271 Cadman Plaza East, Brooklyn, New York 11201.

Dated: Brooklyn, New York
February 27, 2012

LORETTA E. LYNCH
United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201
By: Claire S. Kedeshian
Claire S. Kedeshian
Assistant U.S. Attorney
(718) 254-6051

Dated: New York, New York
February 27, 2012

Coritsidis & Lambros, PLLC
Attorneys for Third Party
Petitioner Marathon National
Bank of New York
46 Trinity Place, 4th Floor
New York, New York 10006
By: Jeffrey Gangemi, Esq.
Jeffrey Gangemi, Esq.
(212) 997-4600

AGREED AND CONSENTED TO:

Christian M. Dahl
Name: Christian M. Dahl
Title: Vice President
An Authorized representative of
MARATHON NATIONAL BANK

NOTARY:

Christian M. Dahl
Sworn to before me on
this 24th Day of
February, 2012

Larisa Svirdova

Larisa Svirdova
Notary Public, State of New York
No. 01SV6012290
Qualified in Kings County
Commission Expires August 24, 2014

SO ORDERED:
on this _____ day of _____, 2012

HONORABLE KIYO A. MATSUMOTO
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK